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SATURDAY, OCTOBER 6, 1866.

THE CIVIL RIGHTS BILL DECLARED UNCONSTITUTIONAL.

Decision by the Supreme Court of Mississippi.

In a case of *habeas corpus*, brought by JAS. LEWIS, a freedman, before Judge A. H. HANDY, Chief Justice of the High Court of Errors and Appeals, of Mississippi, the decision is published in full. The facts are stated as follows:

The petitioner, a freedman, was convicted on the 17th of September, 1866, in the County Court of Madison county, on a charge of *carrying fire arms*, in said county, in the month of August, 1866, contrary to the act of our Legislature of November session, 1865, Chap. 23, Sec. 1, and fined the sum of one dollar and costs; and, in default of payment thereof, he was ordered to be imprisoned in the county jail for the space of five days, and it was ordered that, after the expiration of that time, the fine and costs remaining unpaid, he should be hired out for the payment thereof. The return to the writ of *habeas corpus* showed, that he was held in custody by the Sheriff of Madison county, in virtue of this order and judgment, and by reason of his failure to pay said fine and costs.

On this state of facts, and on argument of counsel in behalf of the petitioner, the matter has been submitted and taken under advisement, in order that mature consideration which the grave and important questions involved in it demand; and I now proceed to state briefly, my views of those questions and my judgment in the matter.

The first point made was, that the charge violated the Bill of Rights of the State which secures the "right of every citizen to bear arms for his defense." This point being disposed of the Judge continues:

Again, it is insisted that the second section of the 13th amendment gave to Congress power to pass laws for the protection and security of the civil rights of the freed negroes, at discretion; that, in the exercise of this power the bill entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," was passed by Congress in April, 1866, and that the act of our Legislature, above mentioned, being in conflict with that act of Congress, becomes inoperative.

Let us examine these positions.

In the first place, what is the extent of the power conferred on Congress by the second section of this amendment?

The first section is in these words: "Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been convicted, shall exist within the United States, or any place subject to its jurisdiction."

The whole and sole purpose of this provision was, to ordain that *slavery should not exist within the United States.* It was a public declaration of *freedom to the slave* complete in itself, requiring nothing further to make it effectual to the end intended. It is of the nature of a legislative edict, which of itself works out its own object, like a legislative act declaring a minor of competent age, or divorcing husband and wife, or investing certain persons with particular specified privileges, or declaring a particular contract rescinded, or a certain deed void and the like. *By its mere operation*, the right of freedom was established *as an accomplished fact*, and this is all that was done, or intended to be done, by this first section.

What, then, is the scope of the power conferred on Congress in the second section, "*to enforce this article*" (the first section) "*by appropriate legislation.*"

It was plainly only legislation *to enforce the right conferred in the first section*, that was contemplated in this section. Its entire scope is to authorize Congress to pass laws securing to the freed negro, *the right of freedom granted.*

The language is plain and insignificant. It is to "*enforce*" the right of freedom conferred. This looks to resistance to its exercise, and gives power to provide remedies to "enforce" it, in case the enjoyment of the right of freedom shall be obstructed or interfered with. It imports that adequate remedies should be provided for putting the negro in the enjoyment of his freedom in case he shall be detained as a slave, as was anticipated, and the like. Then it is to be "*appropriate*" to the right of freedom, and to that alone. It has no reference whatever to "protecting or vindicating" other and collateral rights, not enumerated in the amendment, to which the negro might be considered as entitled, in common with the citizens of the States; for no such rights are embraced in the antecedent section conferring the right authorized by the second section, to be enforced. With no justness or propriety whatever could it be said that legislation in reference to such collateral and independent rights, was "appropriate" to the right of freedom conferred in the previous section. If this be not true, any power whatever may be predicated of this second section; and Congress possesses the pow r under it to annul every State law in relation to free negroes, except probably those in relation to the right of suffrage; to discriminate in their favor against the white man; to regulate the entire penal code of a State and to exempt negroes from punishment to which they, in common with white men, are subject, under State laws, and in short to pass any laws in relation to free negroes which the wildest imagination could suggest, as proper for "protecting and vindicating" their alleged rights.

In order to the exercise of an implied power, the means employed must be "necessary and proper" to the end required. "The government of the United States" say Justice STORY, "can claim now powers which are not granted to it by the Constitution; and the powers actually granted *must be such as are expressly given*, or given *by necessary implication.*" MARTIN vs. HUNTER, 1 WHEAT 104. The implied power must be clearly "necessary and proper" to the carrying out of the particular power expressly granted.

In order to be "appropriate" to that end, the means must be "suitable, fit or proper" to the given end. WEBSTER's Dic. They must be appropriate to that particular end, and not to another; for otherwise, any power might be stretched by implication, and the true rule of construction of the powers of the Federal Government, as established by its most eminent expounders, abused or subverted so as utterly to violate the object of the grant, and to render the powers of Congress unlimited.

It appears to me, therefore, clear that this act of Congress is wholly foreign to the end declared in the first section of the 13 amendment, and cannot be justified by the power granted in the second section of the amendment.

Under a solemn sense of official duty, I am, therefore, constrained to hold, that the act of Congress in question, is in contravention of the Constitution of the United States, as to the matter now presented for my action, and is inoperative and void.

The Judge next proceeded to consider the jurisdiction of State Courts in judicial questions involving the constitutionality of laws enacted by the Federal Congress, and the provision of the Civil Rights bill, prescribing certain punishment for State Judges who should, by their official actions, obstruct the operation of this law, and concludes as follows:

Notwithstanding this duty of determining the validity of all legislative acts, by the test of the Constitution of the United States, is imposed by that Constitution and the act of Congress nearly co-eval with the Constitution, on all judges and magistrates, both Federal and State, whenever a case is properly presented for their decision, it is not the least objectionable part of this extraordinary act of Congress under consideration that it undertakes to subject such officers to punishment for the discharge of this clear and well established duty, and attempts to constrain the consciences of State judges and magistrates, to the enforcement of that act, whether they consider it constitutional or not—a manifest invasion of the province of an independent judiciary which, if successful, would prostrate its high and salutary functions, and to which no one fit to wear the judicial ermine could for a moment yield.

Satisfied, as I am, that the act of the Legislature under which the petitioner has been convicted and is held in custody, is founded in the just constitutional powers of the State Government, he must be remanded to the custody of the Sheriff and ordered to pay the cost of this proceeding.

In support of these several positions the learned Judge arrayed a number of authorities, embracing the leading cases in exposition of our juridical and constitutional history. The case will most likely go to the Supreme Court of the United States.

THE CONSPIRACY UNFOLDING.

[From the St. Louis Republican.]

The evidence of a whispered Radical conspiracy to control the State of Missouri by armed force accumulates from day to day. All the denials of the *Democrat* and Gov. FLETCHER must go for naught. They have been proved guilty of prevarication and falsehood. The criminal duplicity and hypocrisy of the Governor we exposed two or three days since, exhibiting him in the character of chief conspirator in the plot to maintain the Radical ascendency by arms, and actively engaged in its development, while pretending to the public that he had abandoned his designs and was no longer countenancing or aiding in the organization of armed forces having no sanctioned of law. He cannot be ignorant that in every county of the State there is a ramification of an organization political in character, Radical in its creed, illegal and unconstitutional in design, hostile to the liberties of the people, secret in its deliberations, and relying upon armed force for success.

We published, nearly two weeks ago, the general constitution and regulations of the organization known as the "Advance Guard of America," exhibiting the fact that in the State the Radicals were forming themselves into secret associations for political purposes. The phraseology of the Constitution plainly enough indicated that the organization partook of a military character, force being in fact the instrumentality relied upon to give efficiency to its schemes.

The *Democrat* "poohed" at our warnings in reference to this "Advance Guard," characterizing the organization, in substance, as a harmless affair—a mere voluntary association for consultation and united action within legitimate bounds. Since then, from several distinct and widely separated sources, we have received copies of the same "General Constitution" of the order, preceded, however, by a more specific constitution and by-laws, which more clearly discloses the purposes of the invisible body seeking to rule the State, fixing upon it a military character, and pledging it exclusively to the maintenance of the Radical Constitution.

The eighth section reads as follows:

"SEC. 8. The sentinel in the anti-room will report the name of the party seeking admission to the Guard, and, on his being vouched for by some member present, the Adjutant shall order him to be admitted to the ante-room, and examine him as to his qualifications by asking him the following questions: Do you acknowledge the Constitution of the State of Missouri as the supreme law, and are you willing to the utmost of your power to maintain and enforce it? Are you willing to move at the order of your commander to support the Constitution and laws of this State, *with arms if necessary?*"

We will not consume space or time in commenting at any length on this or any other provision of the constitution of such a body. The positive and absolute illegality of it is apparent upon its face. It proclaims a purpose to do an unlawful act—each member being pledged to submission to an unlawful authority, and to obedience to the unlawful orders of the commander of a secret and unlawful band of conspirators who are plotting to maintain by arms the Radical Constitution and laws of the State, for the ultimate purpose of perpetuating the Radical faction in its ill-gotten power.

The menace to the constitutional rights and liberties of the people of Missouri. Its ultimate purpose is the control of the polls by armed men, bound together by obligations pledged in secret, known to each other by secret signs and passwords, and directed by a commander whom they are solemnly pledged to obey. The Governor of the State cannot be ignorant of the existence of this organization. He undoubtedly countenances it, counsels it, corresponds with its leaders, is apprised fully of its progress, numbers, extent and reliability, and is the source of the supply of the "arms" by which its constitution is to be maintained and enforced.

Conservatives have no alternative, in view of the existence of this order, but to be prepared to defend their rights and liberties against any practical demonstration of its plans. When armed conspirators, without legal sanction, assume to be the interpreters, maintainers and enforcers of the law, it is high time for law-abiding men to respond to such an assumption in a way to defend constitutional rights and maintain their liberties under the law. Such an organization has no higher or better authority to act than a gang of guerrillas or a company of buccaneers. They are doubly condemned in their organization and their designs. Let Conservatives be fully prepared, without delay, to meet this order, or any portion of it, whenever and wherever it may present itself.

THE POSITION OF THE POPE.

[From the Dublin Freeman's Journal.]

In accordance with the directions of his Eminence, the Cardinal Archbishop, special devotions were observed in the principal churches and chapels of the diocese of Dublin on Sunday, to implore the Almighty to arrest the dangers which threaten the Supreme Pontiff. In the Cathedral, Marlborough street, the ceremonies were conducted with more than usual solemnity. At 12 o'clock a grand pontificial high mass, at which the Cardinal Archbishop was present, was celebrated. Most Rev. Dr. WHELAN, Lord Bishop of Bombay, celebrant, assisted by Rev. Father O'REILLY and Rev. Father DONNELLY. Rev. Mr. IRWIN acted as master of the ceremonies. A vast congregation thronged every part of the church. When the procession, headed by the cross-bearer and acolyte, proceeded up the sanctuary to the altar, the choir sung the "Ecce Sacerdos." At the conclusion of the mass his Eminence ascended the pulpit and delivered an appropriate address, taking for his text the Gospel of the day. Having expatiated on the text and explained its meaning, his Eminence proceeded to observe that since his return from Rome, the capital and centre of Christianity, he had been desirous of an opportunity of addressing his flock. The faith of Ireland was spoken of with praise throughout the entire world, and the Irish people were everywhere looked upon as worthy children of their martyred ancestors. Their virtues, especially their spirit of obedience and of subordination, were brought out into strong relief at this day by the insubordination and revolutionary doctrines that everywhere prevailed in Europe. Irish Catholics had lost much—they had lost their property and their independence, but they retained what was infinitely more precious than any earthly blessing, the gift of the Catholic faith. As a Catholic nation, Ireland still held a high place among the nations of the earth, and the Sovereign Pontiff, to whom all her trials and sufferings were well known, looked with affection on our country, as one of the brightest gems that adorned the universal Church. They were assembled that day to show their love for the Holy See by uniting their prayers with those of their brethren throughout the length and breadth of Ireland to implore the protection of Heaven on behalf of the Sovereign Pontiff in the danger that at present menaced his liberty of action. His Eminence then proceeded to set forth the claims which the Pope has upon the love of all Catholics, the perils which at present encompassed him, and the way in which the love of his children might be most profitably exhibited toward him, which was by prayer and material aid.

CIVIL RIGHTS—MOTION TO ADMIT A NEGRO TO PRACTICE IN THE COURTS.—In the Criminal Court yesterday G. E. H. DAY, Esq., caused some excitement among members of the bar by moving the admission to practice of JONATHAN WRIGHT, a full-blooded negro. Judge FISHER appointed Messrs. E. C. CARRINGTON, W. S. COX, and S. L. PHILLIPPS, a committee to examine the applicant. The motion caused a good deal of indignant conversation among members of the bar, as no such motion was ever before thought of in the courts of District of Columbia. WRIGHT is about twenty-eight years of age. He studied law with a firm in Scranton, Pa., where he was admitted to the bar, and he is said to be a classical scholar. About three years ago he went to South Carolina and practiced in the Provisional Court there, of which Judge A. D. SMITH was presiding justice, until its abolishment. Should he pass a favorable examination he will no doubt be admitted to practice.—*National Intelligencer, 2nd.*

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